

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

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No. 657.

W. BAILEY, AND J. W. BAILEY, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NORTH CAROLINA, PLAINTIFF IN ERROR,

VS.

DREXEL FURNITURE COMPANY.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

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FILED DECEMBER 21, 1921.

(28612)



# SUPREME COURT OF THE UNITED STATES.

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1 In the District Court of the United States for the Western  
District of North Carolina.

DREXEL FURNITURE COMPANY, PLAINTIFF,	}
<i>v.</i>	
J. W. BAILEY AND J. W. BAILEY, AS COLLECTOR	
of internal revenue for the District of North Carolina, defendant.	

*Order allowing the plaintiff to file amended complaint.*

On motion of counsel for plaintiff, it is ordered that the plaintiff have leave to file an amended complaint in this suit, a copy of which is to be furnished to the United States attorney for this district.

This the 19th day of November, 1921.

JAS. E. BOYD,  
*U. S. District Judge.*

Endorsed: Filed in this office November 19, 1921.

R. L. BLAYLOCK, *Clerk.*

2 UNITED STATES OF AMERICA.

In the District Court for the Western District of North Carolina.

Be it remembered that heretofore, to wit, on the 19th day of November, 1921, an amended complaint was filed in the office of the clerk of the District Court of the United States for the Western District of North Carolina at Greensboro, N. C., in the case wherein the Drexel Furniture Company is plaintiff and J. W. Bailey, collector of internal revenue, is defendant, the said amended complaint, filed on the said 19th day of November, 1921, is in words and figures as follows, to wit:

*Amended complaint, filed November 19, 1921.*

In the District Court of the United States for the Western District  
of North Carolina at Greensboro.

DREXEL FURNITURE COMPANY, PLAINTIFF,	}
<i>vs.</i>	
J. W. BAILEY AND J. W. BAILEY, AS COLLECTOR	
of internal revenue for the District of North Carolina.	

Amended complaint.

The plaintiff complaining of the defendants represents, alleges, and says:

I. That the plaintiff is a resident and citizen of the State of North Carolina and of the western district thereof, being a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at Drexel, North Carolina, in the western district of said State, where it is engaged in the

manufacture of furniture and employs therein both adults and minors

II. That the defendant, J. W. Bailey, was on the 20th day of October, 1921, and prior thereto, collector of internal revenue for the district of North Carolina, with his residence and office at Raleigh, N. C., in the eastern district of said State, and after the said 20th day of October, 1921, and before the institution of this suit the said J. W. Bailey resigned as such collector and was succeeded in said office by Gilliam Grissom.

III. That, prior to September 20, 1921, the plaintiff was informed that during the year 1919 it had employed in its business as aforesaid children under the age of fourteen; whereupon it filed a petition before the Commissioner of Internal Revenue asking for an abatement of the assessment that was proposed to be made by reason of such employment, but the same was denied, for that upon a complete investigation it appeared that during the taxable year 1919 plaintiff had employed and permitted to work in its factory a child under the age of fourteen years in violation of the child labor tax law. That on or about September 20, 1921, the plaintiff received from J. W. Bailey, collector as aforesaid, notice of an assessment of \$6,312.79, a copy of which notice is hereto attached as an exhibit, this sum being a tax of 10% on its net profits for the year 1919 incurred by reason of the aforesaid violation of the child labor tax law, and the said collector accompanied said notice of assessment with the statement that if the said tax was not paid on or before October 20, 1921, the pains and penalty provided by the statute would be incurred and imposed.

IV. That in order to avoid penalties, interest, destraint, or other summary proceedings for the enforcement of the collection of said tax, the plaintiff on October 20, 1921, made payment of said tax claimed of \$6,312.79, to J. W. Bailey, collector as aforesaid, but at the time of making payment of said tax protested against said tax and the payment thereof, and paid the tax under protest, at the same time giving notice to said collector that proceedings would be instituted to recover the said sum so paid. That there is hereto attached as an exhibit a copy of said protest and claim for the return of the sum so paid.

V. That at the time of the payment of said tax, the plaintiff duly filed a claim or application with the said collector, praying for the refund of all of said tax so paid; that, as plaintiff is advised and believes, on the 24th day of October, 1921, the said collector, as he was required to do, duly forwarded said claim or application, together with the written notice of protest, to the Commissioner of Internal Revenue. Said application or claim for refund was in all respects complete and in due form, but was on or about the 25th day of October, 1921, denied and rejected by the Commissioner of Internal Revenue, who, as well as the defendant, still denies and refuses to pay said plaintiff the money asked for and demanded by it in said application or claim for refund. That there is hereto attached as an exhibit a copy of the claim or application

for refund, together with the notice of appeal to the Commissioner of Internal Revenue, and a copy of the denial of the claim for refund of the Commissioner of Internal Revenue.

VI. That the said tax was paid under protest and its refund claimed and demanded because it was erroneously and illegally assessed and collected, for that it was assessed and collected under and pursuant to title 12 of the revenue act of 1918, the same being section 1200, et seq. of chapter 18, of the acts of Congress of February 24, 1919, which act is known as the child labor tax law, and which, as plaintiff is informed and believes, is in truth and in fact not law, but that the said pretended act or law is unconstitutional, because:

(1) It is not the laying or collecting of a tax, duty, impost, or excise to pay the debts and provide for the common defense and general welfare of the United States, as authorized by section 8 of article 1 of the Constitution of the United States.

(2) It is not the laying or collecting of taxes on income which, by the sixteenth amendment to the Constitution of the United States, Congress has the power to lay and collect without apportionment among the several States, and without regard to any census or enumeration.

(3) It is within none of the powers delegated to the Congress of the United States by the Constitution of the United States or any of its amendments.

(4) The sole and intended effect of said statute is to regulate and prohibit the employment of child labor in manufacturing within the State, and is thus an attempt to control the conditions and methods of manufacture, and therefore is an attempted usurpation of the rights and powers of the various States.

(5) Its enactment by Congress is an attempted usurpation of the powers reserved in the Constitution of the United States to the States respectively or to the people, and is therefore in violation of the tenth amendment to the Constitution of the United States.

(6) Its enforcement would deprive plaintiff of its property without due process of law, in violation of the fifth amendment to the Constitution of the United States.

VII. That as plaintiff is advised and believes, by reason of the premises, the defendant is indebted to it in the sum of \$6,312.79, with interest thereon at the rate of six per cent per annum from the 20th day of October, 1921.

Wherefore, the plaintiff prays that it recover of this defendant the sum of \$6,312.79, with interest thereon at six per cent per annum, from the 20th day of October, 1921, and the costs of this action to be taxed by the clerk.

JUNIUS PARKER,  
WM. P. BYNUM,  
WM. M. HENDREN,  
JOHN N. WILSON,

*Attorneys for the Plaintiff.*

6 F. O. Huffman, being duly sworn, says: That he is secretary and treasurer of the plaintiff, Drexel Furniture Company, and that he has read the foregoing complaint in this action, and that the matters therein alleged are true of his own knowledge, except as to those matters and things stated upon information and belief, and as to them he believes it to be true.

F. O. HUFFMAN.

Sworn to and subscribed before me, this the 18th day of November, 1921.

[ NOTARIAL SEAL. ]

L. D. T. Cox, *Notary Public*.

My commission expires Feby 5th, 1921.

Filed in this office, November 19, 1921.

R. Y. BLAYLOCK, *Clerk.*

## EXHIBIT A.

[Treasury Department, U. S. Internal Revenue, Form 1-17—Revised Nov., 1919.]

*Notice and demand for tax and receipt.*

COLLECTOR'S OFFICE, DISTRICT OF N. C.,

*At Raleigh, Date 10/10/21.*

Notice is hereby given that there has been assessed against you the amount set opposite for the liability named, which tax is payable to me. Demand is made for the payment of said tax on or before the date given below. Failure to do so will cause a 5 per cent penalty to accrue with interest at 1 per cent per month from due date until paid.

**Due date 10/20/21.**

J. W. BAILEY.

*Collector of Internal Revenue.*

**Name.**—Drexel Furniture Co.

No. and street.—Drexel.

City and State.—N. C.

This notice must be presented at the time payment is tendered, as when properly stamped "paid" by the collector it becomes a receipt for taxes.

List 23A 1921; Sept.: 0: 0:  
(Year.) (Month.) (Folio.) (Line.)

Child labor tax\_\_\_\_\_

[illegible]

For period ended \_\_\_\_\_

Amount of tax (Taxes, penalties, etc.)

Amount of tax	(Taxes, penalties, etc.)	\$6,312.79
---------------	--------------------------	------------

per cent penalty

5 per cent penalty-----

Total	\$6,312.79
-------	------------

Received payment Oct. 20, 1921.

J. W. BAILEY.

Collector, 4th District N. C.



## EXHIBIT B.

In re claim of Drexel Furniture Company for refund of child labor tax erroneously and illegally exacted and paid.

*To the Honorable Collector of Internal Revenue  
of the District of North Carolina:*

Whereas there was duly filed on the 20 day of October, 1921, with Honorable J. W. Bailey, Raleigh, N. C., collector of internal revenue for the District of North Carolina, by Drexel Furniture Company a claim for refund of tax in the amount of \$6,312.79, and the same has been considered by said collector and by order declined;

The Drexel Furniture Company hereby appeals from said decision and order of the collector declining said claim to the Commissioner of Internal Revenue of the United States, and hereby gives notice thereof, and further prays that the record of the application for refund, with all orders thereon, be transmitted by said collector to the said Commissioner of Internal Revenue for his review and decision, with the appeal in all respects duly executed.

(Signed) DREXEL FURNITURE CO.,

By F. O. HUFFMAN,

*Secy. & Treas.*

## EXHIBIT C.

[Treasury Department, Bureau Internal Revenue. Form 46, Revised Jan., 1920. Ed. 200,000.]

*Claim for refund taxes erroneously or illegally collected, also amounts paid for stamps used in error or excess.*

STATE OF NORTH CAROLINA,

*County of Burke, ss:*

DREXEL FURNITURE COMPANY,

*Drexel, N. C.*

This deponent being duly sworn, according to law, deposes and says that this claim is made on behalf of the claimant named above, and that the facts stated below with reference to the claim are true and complete:

1. Business engaged in by claimant.—Manufacture of furniture.
2. Character of assessment or tax.—10 per cent of net profits for year 1919 incurred by reason of alleged violations of child labor tax law.
3. Amount of assessment of stamps.—\$6,312.79.
4. Amount now asked to be refunded (or such greater amount as is legally refundable).—\$6,312.79.
5. Date of payment of assessment or purchase of stamps.—October 20, 1921.

Deponent verily believes that the amount stated in item 4 should be refunded and claimant now asks and demands refund of said amount for the following reasons:

That said tax is erroneously and illegally assessed and collected for that among other things it is assessed and collected under and pursuant to Title 1<sup>st</sup> of the revenue act of 1918, the same being section 1200, et seq., of chapter 18 of the act of Congress of February 24, 1919, which said act is unconstitutional and therefore void.

And this deponent further alleges that the said claimant is not indebted to the United States in any amount whatever, and that no claim has heretofore been presented, except as stated herein, for the refunding of the whole or any part of the amount stated in item 3.

(Signed) DREXEL FURNITURE CO.,

By F. O. HUFFMAN,

*Sec'y & Treas.*

Sworn to and subscribed before me this 13th day of October, 1921,

(Signed) L. D. T. Cox, *Notary Public*.

My com. expires Feb. 5th, 1923.

10

(Copy.)

EXHIBIT D.

OCTOBER 20TH, 1921.

J. W. BAILEY, Esq.,

*Collector of Internal Revenue, Raleigh, N. C.*

DEAR SIR: Herewith we are handing you check for \$6,312.79, pursuant to notice of assessment given by the Acting Deputy Commissioner of Internal Revenue, and beg leave to inform you that this payment is made under protest, and demand is herewith made for its return and refund upon the ground that the tax is erroneously and illegally assessed and collected, for that among other things, it is assessed and collected pursuant to title 12 of the revenue act of 1918, the same being section 1200, et seq., of chapter 18 of the act of Congress, February 24, 1919, which act is unconstitutional and therefore void.

Yours, very truly,

DREXEL FURNITURE CO.,

By F. O. HUFFMAN,

*Sec'y & Treas.*

Enc.

11

(Copy.)

## EXHIBIT E.

[Treasury Department, Internal Revenue Service. Form 809.]

*Deputy collector's receipt for taxes.*----- DISTRICT OF N. C.,  
Oct. 20th, 1921.

Received of Drexel Furniture Co. \$6,312.79, to be forwarded to the collector to cover child labor tax due taxable period, year 1919.

E. M. PEGRAM,  
*Deputy Collector.*

This amount paid under protest and demand made for refund, October 20, 1921.

J. W. BAILEY, *Collector.*

12

(Copy.)

OCTOBER 29, 1921.

(EXHIBIT F.)

CLT-CL. R 7-W, District of North Carolina.

DREXEL FURNITURE COMPANY,

*% Collector of Internal Revenue.**Raleigh, North Carolina.*

GENTLEMEN: The bureau has given careful consideration to your claim for refund of \$6312.79, child labor tax for the taxable year ending December 31, 1919.

The reason assigned for refund is as follows:

"That said tax is erroneously and illegally assessed and collected for that among other things it is assessed and collected under and pursuant to title 12 of the revenue act of 1918, the same being section 1200, et seq., of chapter 18 of the act of Congress of February 24, 1918, when said act is unconstitutional and therefore void."

The function of this bureau is to administer the revenue laws enacted by Congress, and no claim which is based upon the alleged unconstitutionality of such laws can be favorably entertained.

It is necessary, therefore, to reject the claim filed by you in this case for refund of \$6312.79, which is hereby done. 2

Respectfully,

D. H. BLAIR,  
*Commissioner.*

13

And on the 7th day of November, 1921, summons was issued, said summons issued on the 7th day of November, 1921, is in words and figures as follows, to-wit:

*Summons, issued November 7, 1921.*

UNITED STATES OF AMERICA,

*Western District of North Carolina:*

In the District Court, Fourth Circuit, at Greensboro, N. C.

*The President of the United States of America, to the U. S. Marshal of the Eastern District of North Carolina, greeting:*

You are hereby commanded to summons J. W. Bailey, collector internal revenue for the district of North Carolina, defendant, citizen and resident of the eastern district of North Carolina, to appear before the District Court of the United States to be held for the district aforesaid at Greensboro, on the 21st day of November next, then and there to answer the complaint of Drexel Furniture Company, the plaintiff herein, which complaint will be filed in said court within the time fixed by law. And let the said defendant take notice that if he fail to answer the said complaint within the time limited by law, the plaintiff will apply to the court for the relief demanded in the complaint of Drexel Furniture Company.

Herein fail not, and have you then and there this writ.

Witness the Hon. Jas. E. Boyd, judge of the District Court of the United States, at Greensboro, in said district, the 1st Monday in June, 1921, and in the one hundred and 46th year of the independence of the United States.

Issued the 7th day of November, 1921.

R. L. BLAYLOCK, *Clerk.*

(Endorsed:)

Received at Raleigh 11/12/21.

Exc. at " " by serving the within summons and leaving copy with J. W. Bailey. Geo. H. Bellamy, U. S. Marshal. By M. H. Woodrus, Dep.

Filed in this office Nov. 15, 1921. R. L. Blaylock, clerk.

14 And afterwards, to wit, on the 10th day of December, 1921, a demurrer to said complaint was filed. Said demurrer, filed on December 10, 1921, is in words and figures as follows, to wit:

*Demurrer filed December 10, 1921.*

In the District Court of the United States for the Western District of North Carolina.

DREXEL FURNITURE COMPANY, PLAINTIFF,

*vs.*

J. W. BAILEY AND J. W. BAILEY, COLLECTOR  
internal revenue for the North Carolina  
District, defendant.

} Demurrer.

Now comes F. A. Linney, United States attorney for the Western District of North Carolina, and demurs to the amended complaint, for that the amended complaint which seeks to recover taxes paid

under the provisions of the act of Congress known as the child labor law (title 12 of the revenue act of 1918), the same being section 1200 et seq., of chapter 18 of the act of Congress February 24th, 1919, on the ground that the said act is unconstitutional and void, is without law in that said act is valid and constitutional.

And the said F. A. Linney, United States attorney for defendant, therefore moves to dismiss said action.

F. A. LINNEY,

*United States Attorney for Defendant.*

Filed in this office, Dec. 10, 1921. R. L. Blaylock, clerk.

15 And afterwards, to wit, on the 10th day of December, 1921, final judgment was filed and entered of record, said final judgment filed on the 10th day of December, 1921, is in words and figures as follows, to wit:

*Final judgment, filed December 10, 1921.*

In the District Court of the United States for the Western District of North Carolina, at Greensboro.

DREXEL FURNITURE COMPANY, PLAINTIFF,

*vs.*

J. W. BAILEY AND J. W. BAILEY AS COLLECTOR  
of internal revenue for the District of  
North Carolina, defendant.

} Judgment.

This cause coming on to be heard, and being heard upon the complaint and amended complaint and the demurrer filed herein by the defendant, and the court being of the opinion that the act of Congress under which the tax herein was assessed and collected, is unconstitutional, the demurrer is overruled.

It is further ordered and adjudged that the plaintiff recover of the defendant the sum of \$6,312.79, with interest on the said sum at six per cent per annum from October 20th, 1921, until paid.

The court finds as a fact and so certifies that the tax for the recovery of which this suit was brought was paid to the defendant in his official capacity as collector of internal revenue for the District of North Carolina, and that there was probable cause for his demand and collection of the said tax and that he acted in that respect under the directions of the Secretary of the Treasury, and that the sum so collected by him has been paid by him, in the performance of his official duty, into the Treasury of the United States, and that therefore no execution shall issue against the said defendant, but that the amount adjudged herein to be recovered against the said defendant shall be provided for and paid out of the proper appropriation from the Treasury of the United States.

This the 10th day of December, 1921.

JAS. E. BOYD,

*United States District Judge.*

16 In the District Court of the United States for the Western District of North Carolina, at Greensboro, December 10 1921.

DREXEL FURNITURE COMPANY, PLAINTIFF,

v.

J. W. BAILEY, AND J. W. BAILEY AS COLLECTOR } Opinion.  
of Internal Revenue for the District of  
North Carolina, defendant.

Statement of facts.

This suit is brought by the plaintiff, a manufacturing corporation of this district, against the defendant, a former collector of internal revenue for the district of North Carolina, to recover a tax assessed against it under the provisions of the revenue act of February, 1919 imposing or seeking to impose a ten per cent tax additional to all other taxes on the profits arising from the sale or disposition of the products of mines, mills, workshops, factories, or manufacturing establishments, which at any time during the year shall have employed or permitted to work children under certain prescribed ages and for periods longer than specified in the act. The assessment, amounting to \$6312.79, was paid under duress and with notice of protest and the purpose to sue to recover it back, upon the ground that the law under which it was assessed and collected is unconstitutional. The conditions required by law with respect to bringing suit, such as filing claim for refund, etc., were duly complied with by the plaintiff before the suit was brought. An amended complaint was filed by permission of the court, to which were attached as exhibits the notice of assessment and other papers

relating to the payment of the tax under protest, claim for  
17 refund, etc. A demurrer was filed by the defendant, and upon consideration of the case the court, being of opinion that the tax was illegally assessed and collected because the law under which this was done is unconstitutional, overruled the demurrer and gave judgment in favor of the plaintiff for the amount of the tax paid.

BOYD, District Judge. The question of the constitutionality of the statute challenged in this suit has heretofore been considered by this court, and it is deemed sufficient now to refer to the opinion rendered in the case of *George v. Bailey, Collector*, 274 Fed. Rep., page 639. The opinion in that suit was based chiefly upon the case of *Hammer v. Dagenhart*, 247 U. S., 251.

The great principle emphasized in that case and those cited by the court is that the preservation of the States and the maintenance of all the rights remaining in them after the adoption of the Constitution and the tenth amendment thereto are "As much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government." If the vast field

of power claimed by this act belongs to Congress, then it may be truly asserted that the States, as self-governing sovereigns with respect to their domestic concerns, exist merely at the will of Congress.

The court can not convince itself that Congress has such power. If it has, then it may so legislate as not only seriously to affect but even to destroy the form of government which the Constitution was formed to create and protect. In a matter of such importance this court feels it to be its duty to disregard the form of the Act and to look at the substance.

18 That which is necessarily implied is as much a part of the Constitution as that which is expressed. As declared by the Supreme Court in the *Passenger Tax Cases*, 7 Howard, 283, 428: "It is a very narrow view of the Constitution which supposes that any political sovereign right given by it can be exercised or was meant to be used by the United States in such a way as to dissolve or even disquiet the fundamental organization of either of the States. The Constitution is to be interpreted by what was the condition of the parties to it when it was formed, by their object and purpose in forming it, and by the actual recognition in it of the dissimilar institutions of the States."

If, therefore, the statute under consideration, either directly or by its necessary operation, substantially and necessarily disquiets and disturbs the States in their control of their internal affairs, it must be held invalid, whatever may have been the professed purpose for which it was enacted.

In determining that question the necessary result of the statute must be taken into consideration. "Even if that result is not in so many words either enacted or distinctly provided for. In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." *Collins v. Newhamshire*, 170 U. S. 30, 33, 34.

The purpose of the act in question appears upon its face. It is disclosed by its title and by its scope and inevitable effect. Through the medium of a tax, Congress here, as through the medium of a regulation of commerce in the act of September, 1916, has attempted to fix the standard of labor for mines, quarries, factories, mills, etc., in the various States. The act was not intended to, nor will it, raise revenue. This was admitted, if not openly declared, by its sponsors during its passage through Congress. It was  
19 intended solely to prohibit the employment of child labor.

Whatever else it may be in theory, it is in substance and fact a tax upon the employment of child labor and is so labeled by Congress. The title of the act is "A tax upon the employment of child labor." In other words it is a frank attempt to regulate a purely internal affair of the States, evidently because in the opinion of Congress the States have not regulated it as the Congress thinks it should be regulated.

The court feels constrained, therefore, to hold the act invalid as violative of the Federal Constitution and to overrule the demurrer

and enter judgment for the plaintiff for the amount of the tax paid, with interest as demanded.

Some additional grounds for the conclusion of the Court in this case will be found in the case of *George v. Collector*, supra.

20 And on the said 10th day of December, 1921, an assignment of errors was filed, said assignment of errors filed on December 10, 1921, is in words and figures as follows, to-wit:

*Assignment of errors, filed December 10, 1921.*

In the District Court of the United States for the Western District of North Carolina.

DREXEL FURNITURE COMPANY, PLAINTIFF,	}	Assignment of errors.
<i>vs.</i>		
J. W. BAILEY AND J. W. BAILEY, COLLECTOR of internal revenue, for the District of North Carolina, defendant.		

The defendant above named applying in open court by F. A. Linney, United States attorney, for a writ of error to the Supreme Court of the United States, now as his assignment of errors, shows the court erred:

1. In not sustaining the demurrer filed and in not entering the decree dismissing the bill.

2. In not upholding the validity of the act of Congress, title 12 of the revenue act of 1918, the same being section 1200 et seq., chapter 18 of the act of Congress February 24, 1919.

3. In entering judgment as appears in the record.

F. A. LINNEY,  
*United States Attorney.*

21 In the District Court of the United States for the Western District of North Carolina.

DREXEL FURNITURE COMPANY, PLAINTIFF,	}	Petition for writ of error.
<i>vs.</i>		
J. W. BAILEY AND J. W. BAILEY, COLLECTOR of internal revenue for the district of North Carolina.		

*To the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, and to the Associate Justices of the Court:*

J. W. Bailey and J. W. Bailey, collector of the district of North Carolina, the defendant in the above-entitled cause, shows by this petition to the honorable court that in the records, proceedings, and decisions in the District Court for the Western District of North



Carolina a manifest error has occurred, greatly to the damage of the said defendant.

That as appears in the records and proceedings there was drawn in question the constitutionality of the child labor law, being title 12 of the revenue act of 1918, same being section 1200 et seq. of chapter 18 of the act of Congress, February 24, 1919; all of which fully appears in the records and proceedings of the case and is specifically set forth in the assignment of errors filed herewith.

Wherefore petitioner prays that a writ of error be allowed, and that a transcript of record, proceedings, and papers upon which said judgment was rendered, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said court in such cases made and provided, and that the same may be by this honorable court inspected and corrected in accordance with law and justice. Petitioner files this petition by direction of the United States Attorney General for Department of Justice.

This December 10, 1921.

F. A. LINNEY,

*United States District Attorney, for Defendant.*

The foregoing petition for writ of error is allowed.

This December 10, 1921.

JAS. E. BOYD,

*United States District Judge.*

22 And on the 10th day of December, 1921, an order granting writ of error was filed and entered of record, which said order granting writ of error, filed the 10th day of December, 1921, is in words and figures, to wit:

*Order granting writ of error, filed December 10, 1921.*

In the District Court of the United States, for the Western District of North Carolina.

DREXEL FURNITURE COMPANY,  
plaintiff,

*vs.*

J. W. BAILEY AND J. W. BAILEY,  
collector internal revenue for  
the District of North Carolina.

} Order granting writ of error.

Be it remembered that in the above-entitled cause, on the 10th day of December, 1921, F. A. Linney, United States attorney, for defendant, having made in open court his application for writ of error to the Supreme Court of the United States on the final judgment of the District Court entered December 10, 1921, under the direction of the Department of Justice, and having also made and filed his assignment of errors and having in all respects conformed to the statutes and rules of the court in such cases provided;

It is ordered and adjudged that said writ of error be and the same is hereby allowed as prayed and he is allowed to prosecute the writ of error without giving bond, and the said clerk of the said court is hereby directed to transmit forthwith a duly authenticated transcript of the record, papers, and proceedings on which said order and judgment was made and entered in the Supreme Court of the United States.

This December 10, 1921.

JAMES E. BOYD,  
*United States Judge.*

23 In the District Court of the United States for the Western  
District of North Carolina.

DREXEL FURNITURE COMPANY, PLAINTIFF,	} Writ of error.
<i>vs.</i>	
J. W. BAILEY AND J. W. BAILEY, COLLECTOR	
internal revenue for the district of North Carolina.	

*The President of the United States to the Honorable Judge of the District Court for the Western District of North Carolina, Greeting:*

Whereas in the record and proceeding and in the rendition of the judgment of the above-entitled cause which is now before you between the Drexel Furniture Company, plaintiff, and J. W. Bailey and J. W. Bailey, collector of internal revenue for the district of North Carolina, defendant, there was drawn in question the constitutionality of the law known as the child labor law, being title 12 of the revenue act of 1918, same being section 1200 et seq. of chapter 18 of the act of Congress, February 24, 1919;

And whereas, there is manifest error in said decision to the damage of the defendant, the petitioner in error, and whereas we are willing that if there is error it should be duly corrected, we command you, therefore, if judgment be given therein, that you send under seal of your court, the record and proceedings in said cause to the Supreme Court of the United States, together with this writ, within such time as may be necessary in order that you have the same at Washington on the 5th day of January, 1922, that the record may be then inspected by the Supreme Court of the United States to be then and there held in order that justice may be done.

Witness the Honorable William Howard Taft, Chief Justice of the Supreme Court.

This 10th day of December, 1921.

[SEAL.]

R. L. BLAYLOCK,  
*Clerk of the District Court for the Western District of North Carolina.*

Allowed without giving bond.

JAS. E. BOYD,  
*U. S. District Judge.*

24 And on the 10th day of December, 1921, bill of exceptions was filed, which said bill of exceptions, filed December 10, 1921, is in words and figures as follows, to wit:

*Bill of exceptions, filed December 10, 1921.*

United States District Court for the Western District of North Carolina.

DREXEL FURNITURE COMPANY, PLAINTIFF,

*vs.*

J. W. BAILEY, AND J. W. BAILEY, COLLECTOR OF  
internal revenue, District of North Carolina.

} Bill of exceptions.

Be it remembered that on the 10th day of December, 1921, at a regular term of said court, held in the city of Greensboro, in and for the Western District of North Carolina, before the Honorable James E. Boyd, the issues in the above-entitled cause between the parties as shown in the pleadings coming on to be heard before said judge, defendant being represented by F. A. Linney, United States district attorney, and the plaintiff by W. P. Bynum, when the following proceedings were had, to wit:

First exception. The defendant demurs to the plaintiff's amended complaint, for that the plaintiff was seeking to recover taxes paid under the provisions of the act of Congress, known as the child labor law, title 12 of the revenue act of 1918, same being section 1200 et seq. of chapter 18 of the act of Congress, February 24, 1919, alleging that the said act is unconstitutional and void, whereas the said act and law is valid and constitutional, and the defendant moved to dismiss the said action therefor. The court refused to sustain the demurrer and refused the motion to dismiss, whereupon the defendant's counsel excepted to such refusal and ruling of the court, and prayed this bill of exceptions might be signed and sealed, and it is signed and sealed accordingly.

[SEAL.]

JAMES E. BOYD,  
*United States Judge.*

25 Second exception. The court held and adjudged that the act of Congress, title 12 of the revenue act of 1918, the same being sections 1200 et seq., chapter 18 of the act of Congress, February 24, 1919, was unconstitutional and void, as appears in the judgment. Counsel for the defendant excepted to this action of the court and prayed the bill of exceptions might be signed and sealed, and it is signed and sealed accordingly.

[SEAL.]

JAMES E. BOYD,  
*United States Judge.*

Third exception. The court entered the judgment that appears in the record, adjudging the said act hereinbefore referred to uncon-

stitutional and void, and rendered judgment for plaintiff. Counsel for the defendant excepted to the action of the court and prayed this bill of exceptions might be signed and sealed, and it is signed and sealed accordingly.

[SEAL.]

JAMES E. BOYD,  
*United States Judge.*

Filed this December 10, 1921.

26 And on the 10th day of December, 1921, a citation was issued to the said plaintiff and on the said 10th day of December, 1921, service of same was accepted by attorneys for plaintiff. Said citation, issued on the 10th day of December, 1921, is in words and figures as follows, to-wit:

*Citation, Issued December 10, 1921.*

UNITED STATES OF AMERICA.

*The President of the United States to the Drexel Furniture Company, greetings:*

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in the city of Washington, D. C., on the 5th day of January, 1922, next, pursuant to an appeal from a judgment of the District Court of the United States for the Western District of North Carolina, in your favor passed in a cause in the District Court for the Western District of North Carolina, wherein the Drexel Furniture Company is plaintiff and J. W. Bailey, collector of internal revenue, is defendant, to show cause, if any there be, why the judgment rendered against the said defendant in said cause mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James E. Boyd, Judge of the District Court of the United States for the Western District of North Carolina, this the 10th day of December, in the year of our Lord, one thousand nine hundred and twenty one.

JAMES E. BOYD,  
*United States Judge.*

(Endorsed:) Service accepted December 10, 1921. Wm. P. Bynum, Attorney for Plaintiff.

27 And on the 10th day of December, 1921, a stipulation was entered into, said stipulation entered into on the 10th day of December, 1921, is in words and figures following, to wit:

*Stipulation, filed December 10, 1921.*

In the District Court of the United States for the Western District of North Carolina.

DREXEL FURNITURE COMPANY, PLAINTIFF,

*vs.*

J. W. BAILEY AND J. W. BAILEY, COLLECTOR  
internal revenue for the District of North  
Carolina.

} Stipulation.

In the above-entitled case it is agreed and stipulated by and between the plaintiff in error and counsel for defendant in error,

1st, order allowing amended complaint, the amended complaint, and exhibits attached,

2nd, the summons and return endorsed,

3rd, demurrer filed by defendant and motion to dismiss,

4th, final judgment, and opinion of the court,

5th, assignments of errors,

6th, petition for writ of error,

7th, order granting writ of error and writ of error,

7½, bill of exceptions,

8th, citation,

9th, stipulation,

10th, clerk's certificate,

shall constitute the complete record for the Supreme Court of the United States.

This the 10th day of December, 1921.

F. A. LINNEY,

*United States Attorney for the Western District of N. C.*

WM. P. BYNUM,

*Attorney for Plaintiff.*

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UNITED STATES OF AMERICA.

Western District of North Carolina, in the District Court at Greensboro.

*Order to transmit record.*

And thereupon it is ordered by the court here, that a transcript of the record and proceedings in the cause aforesaid together with all things thereunto relating be transmitted to the said Supreme Court of the United States of America; and the same is transmitted accordingly.

[SEAL.]

R. L. BLAYLOCK, *Clerk.*

In the District Court, for the Western District of North Carolina

I, R. L. Blaylock, clerk of the District Court of the United States for the Western District of North Carolina, do hereby certify that the above and foregoing is a full, true, and complete copy of the record assignments of errors, and all proceedings in the case of Drexel Furniture Company against J. W. Bailey, collector of internal revenue for the western district of North Carolina, No. 1082, as fully as the same appears on file and of record in my office.

Witness my hand and seal of said court.

Done at office in Greensboro, N. C., this the 16th day of December 1921.

[SEAL.]

R. L. BLAYLOCK,  
*Clerk, U. S. District Court.*

(Endorsed on cover:) File No. 28612. W. North Carolina D. C. U. S. Term No. 657. J. W. Bailey, and J. W. Bailey, collector of internal revenue for the district of North Carolina, plaintiff in error vs. Drexel Furniture Company. Filed December 21st, 1921. File No. 28612.



